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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

NESTOR COLON, as an individual and on behalf
of all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

TARGET CORPORATION, a Minnesota
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. STK-CV-1006-2020-10383

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) Unlawful Deductions from Wages
(Lab. Code §§ 201-204, 221-224, 1197)
- (2) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));
- (3) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and
- (4) Violations of Labor Code
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Nestor Colon, submits this Class and Representative
3 Action Complaint against Defendant, Target Corporation, and Does 1 through 50 (collectively,
4 “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants, did not
8 authorize Defendants to withhold “Details Not Displayed” or “Tobco User” deductions from their
9 earned wages, but were nonetheless subject to such deductions. The Complaint addresses Defendants’
10 violations of Labor Code sections 201-204, 221-224, and 226, and seeks damages, penalties, and other
11 relief pursuant to, among other provisions, Sections 210, 218, 218.5, 218.6, 225.5, 226.3, 1194, 1194.2,
12 1197, 1197.1, and 2698 et seq., and the Unfair Competition Law, codified at Business and Professions
13 Code sections 17200 et seq. (the “UCL”).¹

14 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
15 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
16 failing to pay all wages due to Plaintiff and other employees. Instead, Defendants unlawfully withhold
17 earned wages for unauthorized deductions described on Plaintiff and other employees’ paychecks.
18 Defendants’ unauthorized deductions from Plaintiff and other employees’ earned wages are unlawful.

19 3. Defendants’ unlawful deductions from Plaintiff and other employees’ wages result in
20 failures to pay or timely pay all due wages during or at the ends of their employment. Similarly,
21 Defendants’ unlawful deductions also result in failures to provide wage statements that accurately
22 itemize either the deductions made on written orders of the employee or the net wages earned. Plaintiff
23 still has not been paid all of his earned wages.

24 4. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
25 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
26 customs that knowingly deny its employees the above stated rights and benefits.

27
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

JURISDICTION AND VENUE

6. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 221-224, and 226, and the UCL.

7. Venue is proper in the County of San Joaquin. Plaintiff worked for Defendants in Tracy.

PARTIES

8. Plaintiff worked for Defendants until about February of 2020. While Defendants purported to pay agreed upon wages to Plaintiff, Defendants underpaid Plaintiff. Specifically, Plaintiff earned wages that were subject to post-tax deductions that he did not authorize. Defendants unlawfully withheld earned wages for unauthorized deductions described on Plaintiff's paychecks as, for example, "Details Not Displayed" or "Tobco User." Plaintiff was provided wage statements that did not accurately show the deductions he authorized or the net wages earned. Plaintiff still has not been paid all of his earned wages. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code and the UCL.

9. Plaintiff is informed and believes that Defendant, Target Corporation, was and is a Minnesota corporation. Plaintiff is informed and believes that named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and were licensed to do business and doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 221-224, and 226, and the UCL.

10. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was

1 responsible in some way for the matters alleged herein and proximately caused the illegal employment
2 practices, wrongs, and injuries complained of herein.

3 11. At all times herein mentioned, each of said Defendants participated in the doing of the
4 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
5 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
6 scope of said agency and employment.

7 12. Plaintiff is informed and believes that each of said Defendants was the agent, employee,
8 alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was
9 acting within the course and scope of such agency, employment, joint venture, or concerted activity. To
10 the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the
11 remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

12 13. Plaintiff is informed and believes that each of the Defendants (i) aided and abetted the
13 acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii)
14 were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint
15 venture, partnership, or common enterprise.

16 CLASS ACTION ALLEGATIONS

17 14. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
18 certification of the following class and sub-class: all current and former employees of Defendants in the
19 State of California who did not authorize wage deductions for “Details Not Displayed” or “Tobco User”
20 but who were subject to “Details Not Displayed” or “Tobco User” deductions at any time since June 15,
21 2016 (the “Class”), and all current and former employees of Defendants in the State of California who
22 did not authorize wage deductions for “Details Not Displayed” or “Tobco User” but who were subject
23 to “Details Not Displayed” or “Tobco User” deductions at any time since June 15, 2019 (the “Sub-
24 Class”).

25 15. **Numerosity and Ascertainability:** The members of the Class are so numerous that
26 joinder of all members would be impractical, if not impossible. The identities of the members of the
27 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
28 informed and believes that Defendants violate Sections 201-204, 221-224, and 226, and the UCL.

1 against Plaintiff and the Class by failing to pay all earned wages and withholding earned wages through
2 unauthorized deductions from their paychecks.

3 16. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
4 represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready,
5 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have
6 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
7 and-hour class actions currently pending in California state and federal courts.

8 17. **Common Question of Law and Fact:** There are predominant common questions of law
9 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
10 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
11 failing to pay all earned wages and taking unauthorized deductions from Plaintiff and the Class's
12 paychecks.

13 18. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
14 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
15 suffered. As with other members of the Class, Plaintiff earned wages that were subject to post-tax
16 deductions that he did not authorize. He was provided wage statements that did not accurately show the
17 deductions he authorized or the net wages earned, and he still has not been paid all of his earned wages.
18 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

19 19. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
20 in establishing minimum working conditions and requirements in California. These labor standards
21 protect employees from onerous terms and conditions of employment or exploitation by employers who
22 have superior economic and bargaining power.

23 20. The nature of this action and the format of laws available to Plaintiff and members of the
24 Class make the class action format a particularly efficient and appropriate procedure to redress the
25 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
26 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
27 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
28 legal resources. Requiring each member of the Class to pursue an individual remedy would also

discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

21. The prosecution of separate actions by individual members of the Class, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests of other members of the Class not parties to the adjudications. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

22. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-204, 221-224, and 226, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5, among other provisions, to recover unpaid wages, interest, applicable penalties, reasonable attorneys' fees, and costs of suit.

23. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Unlawful Deductions from Wages (Lab. Code §§ 201-204, 221-224, 1197)

(By Plaintiff and the Class Against All Defendants)

24. The preceding paragraphs are re-alleged and incorporated by this reference.

25. Sections 1197 provide a minimum wage to be paid to employees and make unlawful the payment of a lesser wage. Moreover, where statute or contract requires an employer to pay a certain wage, Section 223 makes it unlawful for an employer to pay a lower wage while purporting to pay the required wage. Likewise, Section 221 makes it unlawful for any employer to collect or receive from an employee any part of wages paid to the employee.

1 26. As a matter of policy and practice, Defendants fail to pay all wages due to Plaintiff and
2 the Class. Instead, Plaintiff and the Class earned wages that were subject to post-tax deductions that
3 they did not authorize. While Defendants purport to pay agreed upon wages to Plaintiff and the Class,
4 Defendants actually underpay Plaintiff and the Class. Specifically, Defendants unlawfully withhold
5 earned wages for unauthorized deductions described on Plaintiff and the Class's paychecks as, for
6 example, "Details Not Displayed" or "Tobco User." Defendants' unauthorized deductions from Plaintiff
7 and the Class's earned wages are unlawful.

8 27. Moreover, Section 204 generally provides that wages are due and payable twice during
9 each calendar month, on days designated in advance by the employer as the regular paydays. Section
10 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of
11 discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive
12 all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the
13 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case
14 the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an
15 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
16 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
17 wages shall not continue for more than thirty (30) days.

18 28. As a matter of policy and practice, Defendants' unauthorized deductions from Plaintiff
19 and the Class's earned wages result in failures to pay Plaintiff and the Class all of their earned wages.
20 As a matter of policy and practice, Defendants' unlawful deductions also result in failures to timely pay
21 all due wages during or at the ends of Plaintiff and the Class's employments. On information and belief,
22 Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the
23 Labor Code as they relate to Plaintiff's allegations.

24 29. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
25 entitles Plaintiff and the Class to recover unpaid wages, interest, liquidated damages, applicable
26 penalties, attorneys' fees, and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

3 **(By Plaintiff and the Sub-Class Against All Defendants)**

4 30. The preceding paragraphs are re-alleged and incorporated by this reference.

5 31. Section 226(a) requires an employer to furnish to its employees itemized wage
6 statements that show accurate information, including without limitation, the deductions made on written
7 orders of the employee and the net wages earned.

8 32. As a matter of policy and practice, Defendants fail to provide accurate itemized wage
9 statements to Plaintiff and the Sub-Class. Specifically, because of Defendants' unlawful deductions,
10 Defendants fail to furnish Plaintiff and the Sub-Class with wage statements that accurately show and
11 itemize the deductions made on written orders of the employee and the net wages earned. By showing
12 unauthorized deductions and inaccurate net wages earned, the wage statements furnished by Defendants
13 harmed Plaintiff, as he was erroneously led to believe that he had been paid all of his earned wages.
14 Plaintiff is informed and believes that other employees were similarly injured.

15 33. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
16 entitles Plaintiff and the Sub-Class to recover applicable penalties, attorneys' fees, and costs of suit.

17 **THIRD CAUSE OF ACTION**

18 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

19 **(By Plaintiff and the Class Against All Defendants)**

20 34. The preceding paragraphs are re-alleged and incorporated by this reference.

21 35. Plaintiff is informed and believes that Defendants have engaged and continue to engage
22 in unfair and unlawful business practices in California by utilizing the employment policies and
23 practices alleged herein. Specifically, Defendants unlawfully withhold earned wages and
24 take unauthorized deductions from Plaintiff and the Class's paychecks.

25 36. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
26 or unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed
27 by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition
28 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

Violation of Labor Code (Lab. Code §§ 2698 et seq.)

(By Plaintiff and Aggrieved Employees Against All Defendants)

38. The preceding paragraphs are re-alleged and incorporated by this reference.

39. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity and under Sections 201-204, 210, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 1194, 1194.2, 1197, 1197.1, and 2698 et seq., Plaintiff seeks penalties for Defendants’ Labor Code violations committed since June 15, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants. Plaintiff still has not been paid all of his earned wages.

40. As stated herein, Defendants unlawfully deduct and withhold earned wages from Plaintiff and other employees' paychecks. Specifically, Plaintiff and aggrieved employees earned wages that were subject to post-tax deductions that they did not authorize. Moreover, Defendants' unlawful deductions from Plaintiff and aggrieved employees' wages result in failures to pay or timely pay all due wages during or at the ends of their employment. Similarly, Defendants' unlawful deductions also result in failures to provide wage statements that accurately itemize either the deductions made on written orders of the employees or the net wages earned.

41. On or about December 7, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ Labor Code violations under Sections 201-204, 210, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 1194, 1194.2, 1197, 1197.1, and 2698 et seq. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

42. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees for the period described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for unpaid wages, interest, liquidated damages, and applicable penalties, pursuant to Sections 201-204, 210, 218, 218.5, 218.6, 221-224, 1194, 1194.2, 1197, and 1197.1, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;
6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, interest, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections 210, 225.5, 226.3, 1197.1, and 2699, and for costs and attorneys' fees;
8. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 218.6, 226, 1194, 1197, 1197.1, .and 2699, and Code of Civil Procedure section 1021.5; and
9. For such other and further relief that the Court may deem just and proper.

DATED: December 10, 2020

DIVERSITY LAW GROUP, P.C.

By: 

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